

## **9 FAM 40.35(a) Procedural Notes**

### **9 FAM 40.35(a) PN1 Requesting Information From BDC**

(TL:VISA-77; 3-30-93)

a. Consular officers shall request by immediate cable to USOFFICE BERLIN a summary of the records of any alien entered in CLASS under Code 83 (or P3E1), any alien who is otherwise known or believed to have been a member of one of the "criminal organizations" described in 9 FAM 40.35(a) N6, and any former Nazi Party member who is suspected of falling within the purview of INA 212(a)(3)(E)(i). Any known aliases and/or alternate biographic data should be included. The cable should be in the following format:

ACTION: USOFFICE USBERLIN  
SECSTATE WASHDC

INFO: AMEMBASSY BONN

BERLIN FOR BERLIN DOCUMENT CENTER (BDC)

TAGS: CVIS, PGOV, PEPR, (Country TAG for Applicant's Nationality)

(Applicant's Name)

SUBJECT: Possible 212(a)(3)(E)(i) Ineligibility

1. (Subject's name, DPOB) applied for a (type of visa) on (date of application).

2. In order to assist in determination of visa eligibility, request BDC provide a summary of information on applicant contained in BDC files.

b. The BDC estimates it takes two to four working days to respond to summary requests. Upon receipt of the BDC summary (which the Department will also have received as an info addressee), the consular officer should schedule a visa interview and ask the applicant to bring in any pertinent documentation.

### **9 FAM 40.35(a) PN2 Initial Interview of Possibly Ineligible Applicants**

(TL:VISA-77; 3-30-93)

The following lines of inquiry should be pursued when the applicant affirmatively answers question 33(c) on Form I-230 (IV application) or question 34 on Form I-156 (NIV application), or when other information

relating to the applicant indicates the possibility of ineligibility under INA 212(a)(3)(E)(i).

### **9 FAM 40.35(a) PN2.1 Certain German or Austrian Applicants**

(TL:VISA-77; 3-30-93)

If the applicant was a German or Austrian national during the period encompassed by INA 212(a)(3)(E)(i) and there is reason to believe he or she may be ineligible under that section, the consular officer must inquire whether the applicant:

(1) Was ever a member of, or in any way affiliated with, any of the following organizations: the Leadership Corps of the Nazi Party, the Gestapo (Geheime Staatspolizei), the SD (Sicherheitsdienst des Reichsführer SS), or the SS (Schutzstaffel der NSDAP), including the Allgemeine SS and Waffen SS;

(2) Was ever a member or affiliate of a police unit or ever performed police duties in any territory occupied by or allied with the Nazi Government of Germany; and

(3) Ever served as a guard or received military training at an extermination, concentration, or prisoner-of-war camp under the control of the Nazi Government of Germany, or the government of any area occupied by or allied with the Nazi Government of Germany.

### **9 FAM 40.35(a) PN2.2 Non-German or Austrian Nationals**

(TL:VISA-77; 3-30-93)

In the case of possibly-ineligible aliens from countries allied with or occupied by Nazi Germany during the relevant time period [see 9 FAM 40.35(a) Exhibit I], the same inquiries specified in 9 FAM 40.35(a) PN2.1 above should be pursued concerning the alien's activities and his or her possible association with organizations involved in persecutions. Many, but not all, such organizations are listed in section 9 FAM 40.35(a) Exhibit II.

### **9 FAM 40.35(a) PN2.3 Other Particulars Regarding Activities**

(TL:VISA-77; 3-30-93)

If there is evidence of, or the alien admits to membership in or association with, any of the organizations or activities indicated above, these follow-on questions, together with others that the interview may prompt, will assist the consular officer in developing a complete and meaningful case for assessment and submission to the Department for an advisory opinion:

- (1) Specific identification of the organization(s) and/or unit(s) with which the alien served;
- (2) Inclusive dates of service in each organization or unit;
- (3) The activities or mission of each organization or unit;
- (4) The alien's rank or position therein;
- (5) The duties and responsibilities of the alien;
- (6) The alien's duty station(s), if applicable; and
- (7) The names of the alien's commanding officers or superiors.

### **9 FAM 40.35(a) PN3 Reinterview Based on Berlin Document Center Summaries**

(TL:VISA-77; 3-30-93)

Following receipt of a BDC summary, the consular officer should reinterview the alien in depth regarding his or her military or civilian government service and his or her other activities during the 1933 to 1945 period. Consular officers should ask explicit questions regarding the alien's participation in and/or awareness of the activities proscribed by INA 212(a)(3)(E)(i). Particular attention should be paid to any apparent discrepancies between the alien's statements and the BDC summary.

### **9 FAM 40.35(a) PN4 Advisory Opinion Procedures**

(TL:VISA-77; 3-30-93)

All cases of possible ineligibility under INA 212(a)(3)(E)(i) must be submitted to the Department for a security advisory opinion by means of a "VISAS DONKEY" telegram slugged for CA/VO/L/C and EUR/CE. Once an advisory opinion has been requested, no visa may be issued until the Department's response has been received.

### **9 FAM 40.35(a) PN4.1 Information Included in Advisory Opinion Request**

(TL:VISA-77; 3-30-93)

The first paragraph of the advisory opinion request should provide the alien's name, date and place of birth, the type of visa applied for, the date of application, the date of the visa interview, and the intended travel date and destination in the United States. The remainder of the telegram must contain the following information:

(1) The basis for exploring possible ineligibility (i.e., CLASS entry, admission orally or on the application form, etc.);

(2) A summary of the evidence available to the consular officer pertinent to the alien's eligibility, including specifics of such documents as denazification certificates, military records, post-war military tribunal reports, and POW camp release papers;

(3) A detailed discussion of the visa interview with special emphasis on explaining apparent discrepancies or gaps in chronology, particularly where the applicant's statements are at variance with the BDC summary;

(4) The consular officer's evaluation of the applicant's credibility; and

(5) The consular officer's opinion regarding the alien's eligibility.

### **9 FAM 40.35(a) PN4.2 Time Required to Process Advisory Opinion**

(TL:VISA-77; 3-30-93)

The time required to process an advisory opinion request generally runs between two and four weeks although the period may be longer in cases necessitating additional research. The consular officer's careful attention to the development of the case contributes greatly to expeditious action. The Department is sensitive to the desirability of accommodating travel plans and, to the extent possible, will make every effort to avoid inconveniencing eligible applicants. The Department will usually respond to posts in the "VISAS ONE" or "VISAS TWO" format, and will, as appropriate, either remove the alien's CLASS entry or change the entry to reflect a finding of ineligibility under INA 212(a)(3)(E)(i).